

## **01-1243 BORDEN RANCH v. U.S. ARMY CORPS OF ENGINEERS**

Ruling below: CA 9, 261 F.3d 810.

### **QUESTIONS PRESENTED**

The issue presented by this case is whether a farmer needs a federal permit to plow his agriculturally-zoned ranchland to plant new crops. Section 404 of the Clean Water Act authorizes the Army Corps of Engineers to require permits only for those activities that "discharge" or "add" a "pollutant" from a "point source" into waters of the United States, and further expressly exempts "normal farming and ranching activities, such as plowing" which do not convert the body of water "into a use to which it was not previously subject." Petitioners acquired the Borden Ranch, an 8,400 acre property in California's Central Valley that is zoned for agricultural use, and sought to enhance portions of the land that previously had been used to grow forage crops for higher value vineyards and orchards. Petitioners did this by deep plowing to prepare the soil for these deep-rooted crops. The Army Corps asserted jurisdiction under Section 404 of the Clean Water Act over these plowing activities, claiming petitioners were discharging pollutants into seasonal wetlands. The Ninth Circuit upheld this assertion of federal jurisdiction, over Judge Gould's dissent and in conflict with the D.C. Circuit's National Mining decision.

The questions presented are:

1. Does a rancher's deep plowing to enhance the soil's agricultural viability "add" a "pollutant" to a wetland so as to constitute a regulated point-source "discharge" within the meaning of Section 404 of the Clean Water Act?
2. Is deep plowing of ranchland, which is used to grow forage crops and is farmable in its natural state, in order to plant crops with deeper root systems, statutorily exempt from regulation under Section 404 as a "normal farming activity" that does not bring a water of the United States "into a use to which it was not previously subject"?
3. Does the Clean Water Act's civil penalty section, authorizing penalties "not to exceed \$25,000 per day for each violation," authorize assessing the maximum daily penalty for each time a plow crosses a jurisdictional drainage feature, without regard to the number of days when such activity occurred?

CERT. GRANTED: 6/10/02

J. Kennedy took no part.